## IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,	No. 27304-1-III
Respondent,	) ) ) Division Three
v.	)
BOBBY CURTIS,	) UNPUBLISHED OPINION
Petitioner.	) )

Kulik, J.—On August 13, 2007, Bobby Curtis was found guilty of bail jumping.

Mr. Curtis appeals, claiming the evidence was insufficient to prove that he was the same

Mr. Curtis who signed his name to the minutes sheet in May. We conclude there was

sufficient evidence to support the conviction and, therefore, affirm.

## **FACTS**

On March 28, 2007, Bobby Curtis was charged in district court with fourth degree assault. Mr. Curtis was arraigned on April 18. A pretrial hearing took place on May 22, and the court set June 11 as the date for a bench trial. A "Bobby R. Curtis" signed the minutes sheet, giving him notice of the June 11 mandatory court appearance. Clerk's

Papers (CP) at 20.

On June 11, Mr. Curtis failed to appear and a bench warrant was issued. The district court granted the State's motion to add a count of bail jumping for Mr. Curtis's failure to appear on the June 11 trial date. On June 27, a "Bobby R. Curtis" appeared in court, and the warrant was quashed. CP at 17. Trial was rescheduled and a "Bobby R. Curtis" appeared for trial on August 13. CP at 8. At trial, the State made a motion to dismiss count one, fourth degree assault. After taking judicial notice of the court's record, the district court found Mr. Curtis guilty of bail jumping.

On appeal to the superior court, Mr. Curtis argued that there was insufficient evidence that he was the person who failed to appear for the June 11 trial date. Mr. Curtis relied primarily on *State v. Huber*, 129 Wn. App. 499, 119 P.3d 388 (2005). The superior court dismissed the appeal by order on July 11, 2008.

On July 24, Mr. Curtis filed a notice of discretionary review with this court. On September 4, the commissioner denied the motion for discretionary review. On September 11, Mr. Curtis filed a motion to modify the commissioner's ruling. On October 15, the motion to modify was granted. This appeal followed.

## **ANALYSIS**

Mr. Curtis contends that his due process rights were violated when insufficient

evidence was presented by the State to identify "Bobby Ray Curtis," who was charged with fourth degree assault, as the same "Bobby Ray Curtis" who was accused of bail jumping.

In every criminal prosecution, the State must prove every element of the crime charged beyond a reasonable doubt. U.S. Const. amend. XIV; Const. art. I, § 3; *In re Winship*, 397 U.S. 358, 364, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970). The standard of review for a sufficiency of the evidence claim is whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *State v. Hepton*, 113 Wn. App. 673, 681, 54 P.3d 233 (2002). This standard admits the truth of the State's evidence and all inferences that can reasonably be drawn from this evidence in the State's favor. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992).

Mr. Curtis argues that *Huber* is the controlling authority in his case. Wayne Huber was charged with violating a protection order and tampering with a witness. *Huber*, 129 Wn. App. at 500. Mr. Huber was ordered to appear for court on July 10, 2003, and failed to appear. *Id.* A bench warrant was issued, and he was later charged with bail jumping. *Id.* "The bail jump count was tried separately from the other counts." *Id.* 

The case was tried to a jury. *Id*. In its case in chief, the State introduced the

following evidence: an information charging Mr. Huber with violation of a protection order and witness tampering, a court order requiring Mr. Huber's presence in court on July 10, the clerk's minutes showing that Mr. Huber did not attend the July 10 hearing, and a bench warrant for Mr. Huber's arrest. *Id.* at 500-01. No other witnesses or exhibits were offered by either the State or Mr. Huber. *Id.* at 501. In his closing argument, Mr. Huber argued that "even though the State had proved that a person named Wayne Huber had jumped bail, it had not identified the person who had jumped bail as the person then in court." *Id.* 

In *Huber*, the court determined that the evidence presented by the State was insufficient to identify the Mr. Huber at trial as the same Mr. Huber who had jumped bail. *Id.* at 503-04. The court noted that the statements of counsel which may have indentified Mr. Huber as the individual who had jumped bail could not be taken into account, as such statements were not evidence. *Id.* at 504. In addition, the court held that the State could not prove identity by showing that names on relevant documents match the name of the defendant. *Id.* at 502. Rather, the State must show, by evidence that is independent of the record, "that the person named therein is the defendant in the present action." *Id.* 

However, as was noted here by the superior court and commissioner's ruling, Mr. Curtis's claim is distinguishable from *Huber* in a number of significant ways. First, Mr.

Curtis's claims were tried to a judge, rather than a jury. The judge, familiar with minutes and able to take judicial notice of the minutes, was able to map out both the assault charge and the bail jumping charge when determining that Mr. Curtis was properly identified. In addition, "Bobby R. Curtis" was signed on the minutes sheet which related to Mr. Curtis's fourth degree assault charge.

Most significantly, Mr. Curtis's fourth degree assault charge and his charge for bail jumping were consolidated into one matter, with one cause number. Unlike *Huber*, where the bail jumping charge was tried separately, such is not the case here. Mr. Curtis does not argue that his identification with regard to the assault charge was in error. Therefore, when the bail jumping charge was attached to the same cause number and consolidated into the same trial as the assault charge, any reasonable judge could have logically concluded that the identity of the individual alleged to have committed bail jumping was identical to the identity of the individual facing assault charges. That is because the two matters were tried together, under the same cause number; the individual who committed the alleged assault was necessarily the same person who also committed bail jumping. Such evidence was not presented in *Huber*.

Because Mr. Curtis has not alleged that his identity with regard to the fourth degree assault was in error, it is not at issue now and is a verity. *See State v. Halstien*,

122 Wn.2d 109, 128, 857 P.2d 270 (1993). The fact that Mr. Curtis is adequately tied to the fourth degree assault charge provides evidence independent from name identification that Mr. Curtis is the individual who was properly before the court regarding the alleged bail jumping. As explained in *State v. Brezillac*, a solid connection to some counts, which are tied to others, can constitute independent evidence that all counts relate to the same person. *State v. Brezillac*, 19 Wn. App. 11, 14, 573 P.2d 1343 (1978).

The fourth degree assault was adequately tied to Mr. Curtis and evidence arising therefrom—the same cause number, the minutes sheet which referenced the assault and assault cause number, and the consolidated trial—works as evidence independent of mere name identity and is, therefore, distinguishable from *Huber*.

There was sufficient evidence to support the identification of Mr. Curtis. Accordingly, we affirm the conviction for bail jumping.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

	Kulik, J.
WE CONCUR:	

No. 27304-1-III State v. Curtis

Schultheis, C.J.

Korsmo, J.